

REMARKS

In an office action dated November 18, 2004, the Examiner rejected claims 1-17 under 35 U.S.C. 101 as directed to non-statutory subject matter; rejected claims 1, 4-5 and 7 under 35 U.S.C. 103(a) as being unpatentable over *Among* et al. (U.S. Patent Pub 2003/0110063); and rejected claims 2-3 and 6 under 35 U.S.C. 103(a) as being unpatentable over *Among* in view of *Pugliese III*, et al. (U.S. Patent Pub 2001/0016825).

Statutory Subject Matter

All independent claims have been amended in response to the Examiner's statutory subject matter rejection to recite concrete steps performed by a computer which controls an automated dispensing apparatus. Specifically, the preamble of each independent claim recites a "computer implemented" method. The apparatus receives input¹, and in response to the input, a computer controlling the dispensing apparatus automatically calculates the second price based on the number of passengers. The dispensing apparatus then permits the purchaser to purchase at the second price. As amended, the claims therefore recite a method in which a digital computing device receives input, performs calculations in response to the input, and provides a concrete output in the form of authorizing a purchase at the second price. The claims as amended therefore satisfy the requirements of 35 U.S.C. 101.

¹ The original claim language recited "prompting" a purchaser. This has been changed to recite "receiving" input of various types. Although "prompting" could be performed by displaying information on a computer-controlled output display, "prompting" is not a necessary step performed by a digital computing apparatus. For example, a user might be "prompted" by a sign, or the prompt, such as it is, might be in the nature of the device, its overall appearance, shape, features, and so forth. Furthermore, some input might not be entered by the user at all, but gathered by automatic means (hence no need of a prompt). What the computer does is receive input, and this is what is recited in the amended claims.

Prior Art

In addition to the amendments noted above, independent claim 1 has been amended in several key respects to clarify the scope of the claim. In particular, independent claim 1 has been amended to recite “*tangible* merchandise”², and to recite that the first and second prices are “per-unit” prices. As amended, the claims are patentable over the cited art.

As explained in applicant’s specification, the invention herein relates to a system for varying the price of goods sold, particularly gasoline, according to a number of persons associated with a purchaser, particularly occupants of a car. In the case of gasoline, providing a fuel price incentive based on the number of occupants is a means for encouraging car-pooling and consequent conservation of fuels as a social policy. However, there could conceivably be other commodities, now or in the future, for which there is some justification in social policy or otherwise to offer price incentives based on the number of persons who are associated with the purchaser. It is to be noted that applicant’s invention is not to vary the sale price based on a quantity of a particular item purchased, although it is certainly possible, in fact probable, that the total price charged by a vendor will depend on the quantity purchased. The number of persons associated with the purchaser is an independent variable affecting price.

Both *Among* and *Pugliese* disclose systems for selling travel services and issuing tickets and the like as evidence of purchase of travel services. Under these circumstances, the number of travelers inherently determines the amount of service being purchased. Therefore, by specifying the number of travelers, one is necessarily specifying the quantity of something to be purchased, in this case travel services. Not surprisingly, under these circumstances the total amount charged

² Applicant believes that “*tangible*” was inherent in the word “merchandise”, but in order to make this explicitly clear beyond any doubt, applicant has added the word “*tangible*” as a qualifier.

for services being purchased is dependent on the number of travelers, since the number of travelers determines the quantity of service being purchased.

Two of applicant's independent claims recite the sale of fuel for a vehicle, and are not at issue with respect to this art. The third independent claim, claim 1, originally recited the selling of "merchandise" at a "merchandise price". The Examiner apparently read "merchandise price" to mean the total sale price, which includes the quantity being sold. In these circumstances, it is obvious that the "merchandise price" will vary with the quantity sold.

In order to clarify the invention herein, applicant has amended claim 1 to recite a method for selling *tangible merchandise* having a *per-unit* price, in which the *per-unit* price depends on the number of people associated with the purchaser. Such a method is neither taught nor suggested by the cited art. As explained above, the cited art discloses automated systems for selling travel services, in which the quantity of services being purchased (and hence the total cost) is determined by the number of persons for whom the services are purchased. The sale of "tangible merchandise" is not disclosed by these references, but even if this system is applied to the sale of "tangible merchandise", all that the references would suggest is that the total sale price be dependent on the quantity sold. This is exactly what is implemented today in automated fuel dispensing facilities, vending machines, and so forth. In each case, it is the *quantity sold* which determines the total price of the sale. There is nothing in this art or other conventional art which would teach or suggest that the number of persons associated with a purchaser, as a variable independent of the quantity sold, would affect the sale price.

For all of the reasons stated above, applicant's amended claim 1 and the claims dependent on it are patentable over the cited art.

Additional Amendments

Applicant has further amended claims 8 and 14 to change recited "commuting with" to "accompanying". In accordance with applicant's preferred embodiment, the automated fuel dispensing facility does not determine whether the occupants of a vehicle are in fact commuters, and in general it would be difficult or impossible for an automated device to do so. It would be possible to exclude family members from a count of passengers for this purpose, but this is not an actual determination of who is or is not a commuter. It is therefore believed that the amended language more correctly recites the claimed invention.

Conclusion

In view of the foregoing, applicant submits that the claims are now in condition for allowance and respectfully requests reconsideration and allowance of all claims. In addition, the Examiner is encouraged to contact applicant's attorney by telephone if there are outstanding issues left to be resolved to place this case in condition for allowance.

Respectfully submitted,

GORDON J. SMITH

By:


Roy W. Truelson
Registration No. 34,265

Telephone: (507) 289-6256